REMARKS

[0003] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 CFR. § 1.114 as they are submitted with a Request for Continued Examination.

[0004] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-40 are presently pending. Claims amended herein are 1, 11, 17, 30, and 36. No claims are withdrawn, canceled or added herein.

Statement of Substance of Interview

[0005] The Examiner graciously talked with me—the undersigned representative for the Applicant—on 01/05/09. Applicant greatly appreciates the Examiner's willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0006] During the interview, I discussed how the claims differed from the cited reference, namely Horn. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible claim amendments.

[0007] The Examiner was receptive to the proposals, and I understood the Examiner to indicate that the proposed claim amendments appeared to distinguish over the cited art of record. However, the Examiner indicated that he would need

to review the cited art more carefully and/or do another search, and requested that the proposed amendments be presented in writing.

[0008]   Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited reference of record for at least the reasons discussed during the interview.

Formal Request for an Interview

[0009]   If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0010]   Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

ANTICIPATION REJECTIONS

Based upon Horn

[0011]   The Examiner's rejections are based upon the following reference:

- **Horn:** *Horn, et al.,* US Patent No. 2002/0107968 (published August 8, 2002).

[0012]   The Examiner rejects claims 1-40 under 35 U.S.C. § 102(b) as being anticipated by Horn. Applicant respectfully traverses this rejection. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

[0013]   Furthermore the Examiner responds to Applicant's arguments in the section titled "Response to Arguments", p. 2-3. Applicant does not concede the points made by the examiner. However, Applicant presents herein amendments to the claims to further distinguish over the cited references, as will be discussed below.

Independent Claim 1

[0014]   Without conceding the propriety of the rejection of this claim, Applicant amends claim 1 herein. Applicant submits that Horn does not anticipate this claim because it does not disclose at least the following features as recited in this claim (with emphasis added):

- <u>calculate a priority for the send request; and</u>

- <u>associate a unique global priority with the send request</u>; and

- a plurality of senders including a sender that is associated with media data including the media data portion, the sender adapted to send the media data portion to the client in response to the send request <u>and wherein the sender includes a send request ranker adapted to rank send requests in order of the associated unique global priority</u>.

[0015] Applicant submits that Horn does not disclose the claimed "calculate a priority for the send request". Instead, Horn describes "a method of scheduling a media object for transmission between a server and a client," (Summary).

[0016] Horn's method "comprises partitioning the media object into segments of blocks, wherein each block is a unit of media for which a client will wait to receive an entire block before playing out the block, and wherein each segment includes an integer number of blocks," (Summary), but the described embodiments do not include establishing a priority for the integer number of blocks. Further, Applicant respectfully submits that the claimed priority was not recited in the previous version of the claims. Accordingly, the Examiner has not cited any portion of Horn or any other reference as teaching at least this new feature.

[0017] Consequently, Horn does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 2-10

[0018]   These claims ultimately depend upon independent claim 1.   As discussed above, claim 1 is allowable.   It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 11

[0019]   Without conceding the propriety of the rejection of this claim, Applicant amends claim 11 herein.   Applicant submits that Horn does not anticipate this claim because it does not disclose at least the following features as recited in this claim (with emphasis added):

- a scheduler that is adapted to transmit to the first sender a first send request that designates a destination client and stipulates the first media data block and to transmit to the second sender a second send request that designates the destination client and stipulates the second media data block, wherein both the first send request and the second send request have a unique global priority associated therewith, the unique global priority comprising:
- deadline data or early data; and
- an option count of devices that have the stipulated first or second media data block, respectively, stored therein.

[0020] Applicant submits that Horn does not disclose the claimed "<u>wherein both the first send request and the second send request have a unique global priority associated therewith</u>". As noted above, Horn describes "a method of scheduling a media object for transmission between a server and a client," (Summary).

[0021] However, the described embodiments of Horn do not include associating a unique global priority with send requests. Furthermore, as Horn is silent with regard to prioritizing, Horn additionally does not disclose priority comprising the claimed "deadline data or early data".

[0022] Consequently, Horn does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 12-16

[0023] These claims ultimately depend upon independent claim 11. As discussed above, claim 11 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 17

[0024]   Without conceding the propriety of the rejection of this claim, Applicant amends claim 17 herein.   Applicant submits that Horn does not anticipate this claim because it does not disclose at least the following features as recited in this claim (with emphasis added):

- ranking the send request based on an associated unique priority of the send request, wherein the associated unique priority is calculated by determining whether a plurality of devices store the media data portion, and wherein the associated unique priority is set to a lower priority if there is more than one device that stores the media data portion, and wherein the priority is set to a higher priority if there is only a single device that stores the media data portion, and wherein if none of the plurality of devices that store the media data portion would send the media data portion if all of the plurality of devices were considered when calculating the priority, then selecting a single device of the multiple devices and calculating the priority based on the single device

- ascertaining a threshold priority based on the ranking and responsive to a send bandwidth; and in response to determining that the associated unique priority of the send request is greater than the threshold priority, honoring the send request by sending from the second device to the destination client the stipulated media data portion in response to the send request, wherein the first device is not the destination client

[0025]   Applicant submits that Horn does not disclose the claimed "ranking the send request based on an associated unique priority of the send request". As noted previously, Horn does not disclose or describe prioritizing send requests.

[0026]   Horn is further silent with regard to ranking a send request based on an associated priority.

[0027]   Applicant submits that Horn does not disclose additional of the features recited in this claim (such as "determining that the associated unique priority of the send request is greater than the threshold priority"), neither those that are newly amended nor previously presented, but submits that those arguments are cumulative to the forgoing.

[0028]   Consequently, Horn does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 18-29

[0029]   These claims ultimately depend upon independent claim 17. As discussed above, claim 17 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 30

[0030] Without conceding the propriety of the rejection of this claim, Applicant amends claim 30 herein. Applicant submits that Horn does not anticipate this claim because it does not disclose at least the following features as recited in this claim (with emphasis added):

- scheduler means for scheduling media data to be sent to multiple clients with which the scheduler means is associated, the scheduler means including send request means for <u>generating send requests and associating a unique global priority therewith to </u>requesting the sending of the media data to the multiple clients

[0031] Applicant submits that Horn does not disclose the claimed "scheduler means" that includes the claimed "means for generating send requests and associating a unique global priority therewith".

[0032] As noted with regard to independent claim 1, Horn describes "a method of scheduling a media object for transmission between a server and a client," (Summary) and Horn's method "comprises partitioning the media object into segments of blocks, wherein each block is a unit of media" (Summary).

[0033] But the described embodiments do not describe a scheduler means that includes a means to both generate a send request and associate a unique global priority to that send request as claimed.

[0034]   Consequently, Horn does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 31-35

[0035]   These claims ultimately depend upon independent claim 30. As discussed above, claim 30 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 36

[0036]   Without conceding the propriety of the rejection of this claim, Applicant amends claim 36 herein.   Applicant submits that Horn does not anticipate this claim because it does not disclose at least the following features as recited in this claim (with emphasis added):

- create respective senders on the respective devices of the plurality of devices, each respective sender capable of <u>ascertaining a threshold priority and </u>sending a respective media data block of the media data blocks;

- associate a unique priority with the send request, wherein the respective senders are capable of sending the respective media data blocks to the destination client without using the scheduler

[0037] Here Applicant reiterates arguments presented for independent claim 11, the described embodiments of Horn do not include "associate[ing] a unique priority with send requests", as claimed.

[0038] Furthermore, Applicant reiterates arguments presented for independent claim 1. Applicant additionally submits that Horn does not disclose the claimed "each respective sender capable of ascertaining a threshold priority".

[0039] The Application describes one purpose and advantage offered by a sender that is capable of ascertaining a threshold priority namely "to reduce the likelihood of a streaming failure" for a "finite bandwidth" (paras. 0060 and 0062, p. 16).

[0040] Applicants submit that at least this claimed feature represents an unobvious and patentable improvement over the methods described by Horn in that Horn expresses a long felt need for a Media on Demand (MOD) system by stating the following:

> A MOD system may be constrained by available resources such as the total network bandwidth available to the MOD system, the client download rate or the total number of channels (or multicast groups, where a multicast network is used) available to the client or the server. ([0050])

> In some cases, the client or the network between the server and the client are more of a constraint on transmission of the

stream. For example, the maximum rate that the client can download a media object, Rd, may be constrained by the client's link to the network. What is crucial is the relationship between the download rate Rd and the media play out rate Rp. ([0052])

[0041] Given the fact that Horn was aware of these needs and does not disclose "ascertaining a threshold priority" to mitigate these issues, it can not fairly be said that it was obvious for Applicant to make such an improvement.

[0042] Consequently, Horn does not disclose all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 37-40

[0043] These claims ultimately depend upon independent claim 36. As discussed above, claim 36 is allowable. It is axiomatic that any dependent claim, which depends from an allowable base claim, is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Conclusion

[0044] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action**. Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

  /Randall T. Palmer 61,440/   Dated: 01/26/09

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